IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1940 OF 2006
IN
WRIT PETITION NO.6556 OF 2005

Shri Mohsin Haider .. Applicant
v/s.
The Commissioner,
Konkan Division, Mumbai and others .. Respondents

Ms.J.A.Sarkhot i/by Mr.K.H.Giri for the applicant.

Mr.D.B.Sawant for the respondent No.3.

CORAM : R.M.LODHA &
NARESH H. PATIL, JJ.

DATED : 4TH AUGUST, 2006.

P.C.

On 19th November, 2005, the writ petition was dismissed in default. An application was made by the petitioner for restoration of the writ petition. The said application was granted and on 18th March, 2006, the writ petition was restored. Thereafter, on 25th July, 2006, when the case was called out, nobody appeared for the petitioner and writ petition was dismissed in default.

2. Now by this civil application, the applicant prays that the order dated 25th July, 2006 be recalled and the writ petition be

restored to file.

3. It is stated in the application that on 24th July, 2006, the Board Department informed the applicant's advocate's clerk that the matter will be posted on board for admission in the week commencing from 31st July, 2006 but surprisingly, the matter was posted on board on 25th July, 2006. The advocate for the applicant was unable to attend the proceedings and instructed his colleague Ms.Jahan-Ara Sarkhot to attend the matter. She checked the board on the internet on 24th July, 2006 at about 8.40 p.m. in the evening. However, the matter was not notified and the applicant's advocate was under bonafide impression that the matter was not notified on board. The advocate's clerk also escaped the board and both of them were under impression that the matter was not notified on printed board.

4. We are not impressed by the explanation. The application does not disclose the name of the applicant's advocate's clerk nor does it disclose the name of the official of the Board Department who informed the applicant's advocate's clerk on 24th July, 2006 that the matter would come up on board in the week commencing from 31st July, 2006. Moreover, the fact of the matter is that the advocate for the applicant did come to know that the matter has been posted on board on 25th July, 2006 and asked his colleague Ms.Jahan-Ara Sarkhot to attend the matter. This leaves no manner of doubt that the advocate for the applicant was in know of the fact that the matter is on board on 25th July, 2006. If that be so, the explanation that the applicant's advocate's colleague checked the board on internet on

24th July, 2006 at 8.40 p.m. in the evening and that the matter was not notified, pales into insignificance. How could there be any bonafide impression that the matter was not notified on board when the applicant's advocate himself instructed his colleague Ms.Jahan-Ara Sarkhot to attend the matter. The whole explanation is make believe and does not inspire confidence.

5. In the circumstances, the application for restoration does not deserve to be maintained as already noticed above. Earlier also, the writ petition was dismissed in default and then restored by the order dated 18th March, 2006.

Civil application is dismissed.

(R.M.LODHA, J.)

(NARESH H. PATIL, J.)